

HOSTING AGREEMENT

Nobel Systems Inc. - Terms and Conditions

1. LICENSE, SUBSCRIPTION, AND PAYMENT

1.1 License. Subject to the terms of this Agreement, Nobel Systems grants to Customer a limited, non-exclusive, non-transferable, and non-assignable license to access and use the Provided Content for a period of thirty-six (36) months. In GeoViewer, customer's access and use of the Provided Content shall be solely for its normal internal business activities, free of charge, by its employees and consistent with Customer's representations to NOBEL.

1.2 Payment for the License and Subscription. In exchange for the license or services granted, the Customer agrees to pay all the fees listed in this order. All invoices are due upon receipt and are payable in accordance with the payment schedule. Any invoice not paid within thirty (30) days of its scheduled payment date shall be considered past due.

1.3 Non-Payment or Failure to Pay. A charge of one and one-half percent (1.5%) per month may be assessed on any outstanding and past due invoices until paid in full. If NOBEL does not receive from Customer payment for the invoiced amount within thirty (30) days of its due date, Nobel may suspend Customer's access and use of the Provided Content, until Customer brings its account current.

2. TERM AND TERMINATION.

- i) **Term.** This agreement is valid for three (3) years.
- ii) **Renewal and Termination Without Cause.** This Agreement shall automatically renew for an additional year unless a party notice of termination at least thirty (30) days before expiration of the current three-year term.
- iii) Customer may terminate the Agreement at the expiration of the Agreement Term or any renewal term by submitting a letter in writing.
- iv) Terminating the Agreement does not prejudice either party's rights or remedies for breach of this Agreement.
- v) **Termination for Cause.** Either party, as applicable, shall have the right, in addition, and without prejudice to any other rights or remedies, to terminate this Agreement as follows:
- vi) By either party for any material breach of this Agreement by the other party that is not cured within ten (10) days of written notice to the defaulting party specifying the breach and requiring its cure; or

- vii) By either party, immediately upon written notice, if the breach cannot be cured. Breach of the confidentiality terms presumptively cannot be cured.
- viii) A party does not need to wait the 10 days under subparagraph (i) before initiating legal action to obtain injunctive relief.

Rights and Duties on Termination.

- ix) Customer shall cease using the Software, and Software Documentation without demand or notice from Nobel Systems.
- x) Nobel Systems may disable Customer's access to Customer's Data Nobel Systems Web Subscription.
- xi) Customer shall return to Nobel Systems all Documents and media containing and all copies of any Software, Software Documentation and/or Nobel Systems' Confidential Information. Customer shall delete and erase all copies of such materials from its hardware and data storage media including hard drives, DVDs, and CDs. Customer shall certify to Nobel Systems it has complied with this section within 10 days after this Agreement terminates.
- xii) Nobel Systems shall return to Customer all Documents and media containing Customer's Data. Unless customer requests otherwise in writing, Nobel Systems shall delete and erase all copies of Customer's Data from its hardware and data storage media including hard drives, DVDs and CDs. Nobel Systems shall certify to Customer it has complied with this section within 10 days after this Agreement terminates.
- xiii) The provisions re: intellectual property, confidentiality return of Documents, licensing the Software, and duties on termination survive termination of this Agreement.

3. WARRANTY & LIMITATION OF LIABILITY

3.1 Limited Warranty. Each party represents and warrants that it has full power and authority to enter into this Agreement. Each party will indemnify and defend the other and its officers, directors, and employees from third party claims arising out of or related to a breach of such party's representation or warranty in this Agreement.

3.2 Disclaimed Warranties. Except for any express warranties, NOBEL and each contributor to the Provided Content disclaims all warranties, including but not limited to any warranty of design, merchantability, fitness for a particular purpose, and against infringement. NOBEL and each contributor make no representation or warranties that the Provided Content is accurate and free of errors and/or omissions. As such the Provided Content is not suitable for use in emergencies. Customer accepts the Provided Content on an "as is", "as available" basis.

3.3 Limitation of Liability. NOBEL shall not be liable for any loss, injury, claim, or damage of any kind resulting in any way from Customer's use of the Provided Content (regardless of any assistance from NOBEL in using the content) or from any delay or failure in performance beyond the reasonable control of NOBEL. The aggregate and maximum liability of NOBEL in connection with any claim arising out of or relating to this Agreement shall be limited to a refund of 12 months of fees and taxes paid by Customer to NOBEL. NOBEL shall not be liable for any special, indirect, incidental, or consequential damages of any kind whatsoever (including attorneys' fees) arising in connection with Customer's use of the Web site, Provided Content, or the failure of NOBEL to perform its obligations, regardless of any negligence alleged.

The information contained in this document is proprietary and confidential.

NOBEL SYSTEMS



By: Balaji Kadaba

1/27/2021
Date

Title: Vice President, Operations

CITY OF UPLAND



By:

Date

Rosemary Hoerning, City Manager